

In the House of Representatives, U. S.,

September 11, 2012.

Resolved, That the bill from the Senate (S. 710) entitled “An Act to amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system.”, do pass with the following:

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Hazardous Waste Elec-*
3 *tronic Manifest Establishment Act”.*

4 ***SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-***
5 ***TEM.***

6 *(a) IN GENERAL.—Subtitle C of the Solid Waste Dis-*
7 *posal Act (42 U.S.C. 6921 et seq.) is amended by adding*
8 *at the end the following:*

9 ***“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST***
10 ***SYSTEM.***

11 *“(a) DEFINITIONS.—In this section:*

12 *“(1) BOARD.—The term ‘Board’ means the Haz-*
13 *ardous Waste Electronic Manifest System Advisory*
14 *Board established under subsection (f).*

1 “(2) *FUND.*—The term ‘Fund’ means the Haz-
 2 ardous Waste Electronic Manifest System Fund estab-
 3 lished by subsection (d).

4 “(3) *PERSON.*—The term ‘person’ includes an in-
 5 dividual, corporation (including a Government cor-
 6 poration), company, association, firm, partnership,
 7 society, joint stock company, trust, municipality,
 8 commission, Federal agency, State, political subdivi-
 9 sion of a State, or interstate body.

10 “(4) *SYSTEM.*—The term ‘system’ means the haz-
 11 ardous waste electronic manifest system established
 12 under subsection (b).

13 “(5) *USER.*—The term ‘user’ means a hazardous
 14 waste generator, a hazardous waste transporter, an
 15 owner or operator of a hazardous waste treatment,
 16 storage, recycling, or disposal facility, or any other
 17 person that—

18 “(A) is required to use a manifest to comply
 19 with any Federal or State requirement to track
 20 the shipment, transportation, and receipt of haz-
 21 ardous waste or other material that is shipped
 22 from the site of generation to an off-site facility
 23 for treatment, storage, disposal, or recycling; and

24 “(B)(i) elects to use the system to complete
 25 and transmit an electronic manifest format; or

1 “(ii) submits to the system for data proc-
2 essing purposes a paper copy of the manifest (or
3 data from such a paper copy), in accordance
4 with such regulations as the Administrator may
5 promulgate to require such a submission.

6 “(b) *ESTABLISHMENT*.—Not later than 3 years after
7 the date of enactment of this section, the Administrator
8 shall establish a hazardous waste electronic manifest system
9 that may be used by any user.

10 “(c) *USER FEES*.—

11 “(1) *IN GENERAL*.—In accordance with para-
12 graph (4), the Administrator may impose on users
13 such reasonable service fees as the Administrator de-
14 termines to be necessary to pay costs incurred in de-
15 veloping, operating, maintaining, and upgrading the
16 system, including any costs incurred in collecting and
17 processing data from any paper manifest submitted to
18 the system after the date on which the system enters
19 operation.

20 “(2) *COLLECTION OF FEES*.—The Administrator
21 shall—

22 “(A) collect the fees described in paragraph
23 (1) from the users in advance of, or as reim-
24 bursement for, the provision by the Adminis-
25 trator of system-related services; and

1 “(B) deposit the fees in the Fund.

2 “(3) *FEE STRUCTURE.*—

3 “(A) *IN GENERAL.*—The Administrator, in
4 *consultation with information technology ven-*
5 *dors, shall determine through the contract award*
6 *process described in subsection (e) the fee struc-*
7 *ture that is necessary to recover the full cost to*
8 *the Administrator of providing system-related*
9 *services, including—*

10 “(i) contractor costs relating to—

11 “(I) materials and supplies;

12 “(II) contracting and consulting;

13 “(III) overhead;

14 “(IV) information technology (in-
15 *cluding costs of hardware, software,*
16 *and related services);*

17 “(V) information management;

18 “(VI) collection of service fees;

19 “(VII) reporting and accounting;

20 *and*

21 “(VIII) project management; and

22 “(ii) costs of employment of direct and
23 *indirect Government personnel dedicated to*
24 *establishing, managing, and maintaining*
25 *the system.*

1 “(B) *ADJUSTMENTS IN FEE AMOUNT.*—

2 “(i) *IN GENERAL.*—*The Administrator,*
 3 *in consultation with the Board, shall in-*
 4 *crease or decrease the amount of a service*
 5 *fee determined under the fee structure de-*
 6 *scribed in subparagraph (A) to a level that*
 7 *will—*

8 “(I) *result in the collection of an*
 9 *aggregate amount for deposit in the*
 10 *Fund that is sufficient and not more*
 11 *than reasonably necessary to cover cur-*
 12 *rent and projected system-related costs*
 13 *(including any necessary system up-*
 14 *grades); and*

15 “(II) *minimize, to the maximum*
 16 *extent practicable, the accumulation of*
 17 *unused amounts in the Fund.*

18 “(ii) *EXCEPTION FOR INITIAL PERIOD*
 19 *OF OPERATION.*—*The requirement described*
 20 *in clause (i)(II) shall not apply to any ad-*
 21 *ditional fees that accumulate in the Fund,*
 22 *in an amount that does not exceed*
 23 *\$2,000,000, during the 3-year period begin-*
 24 *ning on the date on which the system enters*
 25 *operation.*

1 “(iii) *TIMING OF ADJUSTMENTS.*—Ad-
 2 *justments to service fees described in clause*
 3 *(i) shall be made—*

4 “(I) *initially, at the time at*
 5 *which initial development costs of the*
 6 *system have been recovered by the Ad-*
 7 *ministrator such that the service fee*
 8 *may be reduced to reflect the elimi-*
 9 *nation of the system development com-*
 10 *ponent of the fee; and*

11 “(II) *periodically thereafter, upon*
 12 *receipt and acceptance of the findings*
 13 *of any annual accounting or auditing*
 14 *report under subsection (d)(3), if the*
 15 *report discloses a significant disparity*
 16 *for a fiscal year between the funds col-*
 17 *lected from service fees under this sub-*
 18 *section for the fiscal year and expendi-*
 19 *tures made for the fiscal year to pro-*
 20 *vide system-related services.*

21 “(4) *CREDITING AND AVAILABILITY OF FEES.*—
 22 *Fees authorized under this section shall be collected*
 23 *and available for obligation only to the extent and in*
 24 *the amount provided in advance in appropriations*
 25 *Acts.*

1 “(d) *HAZARDOUS WASTE ELECTRONIC MANIFEST*
2 *SYSTEM FUND.*—

3 “(1) *ESTABLISHMENT.*—*There is established in*
4 *the Treasury of the United States a revolving fund,*
5 *to be known as the ‘Hazardous Waste Electronic*
6 *Manifest System Fund’, consisting of such amounts*
7 *as are deposited in the Fund under subsection*
8 *(c)(2)(B).*

9 “(2) *EXPENDITURES FROM FUND.*—

10 “(A) *IN GENERAL.*—*Only to the extent pro-*
11 *vided in advance in appropriations Acts, on re-*
12 *quest by the Administrator, the Secretary of the*
13 *Treasury shall transfer from the Fund to the Ad-*
14 *ministrator amounts appropriated to pay costs*
15 *incurred in developing, operating, maintaining,*
16 *and upgrading the system under subsection (c).*

17 “(B) *USE OF FUNDS BY ADMINISTRATOR.*—
18 *Fees collected by the Administrator and depos-*
19 *ited in the Fund under this section shall be*
20 *available to the Administrator subject to appro-*
21 *priations Acts for use in accordance with this*
22 *section without fiscal year limitation.*

23 “(C) *OVERSIGHT OF FUNDS.*—*The Adminis-*
24 *trator shall carry out all necessary measures to*
25 *ensure that amounts in the Fund are used only*

1 *to carry out the goals of establishing, operating,*
 2 *maintaining, upgrading, managing, supporting,*
 3 *and overseeing the system.*

4 “(3) *ACCOUNTING AND AUDITING.*—

5 “(A) *ACCOUNTING.*—*For each 2-fiscal-year*
 6 *period, the Administrator shall prepare and sub-*
 7 *mit to the Committee on Environment and Pub-*
 8 *lic Works and the Committee on Appropriations*
 9 *of the Senate and the Committee on Energy and*
 10 *Commerce and the Committee on Appropriations*
 11 *of the House of Representatives a report that in-*
 12 *cludes—*

13 “(i) *an accounting of the fees paid to*
 14 *the Administrator under subsection (c) and*
 15 *disbursed from the Fund for the period cov-*
 16 *ered by the report, as reflected by financial*
 17 *statements provided in accordance with—*

18 “(I) *the Chief Financial Officers*
 19 *Act of 1990 (Public Law 101–576; 104*
 20 *Stat. 2838) and amendments made by*
 21 *that Act; and*

22 “(II) *the Government Manage-*
 23 *ment Reform Act of 1994 (Public Law*
 24 *103–356; 108 Stat. 3410) and amend-*
 25 *ments made by that Act; and*

1 “(ii) *an accounting describing actual*
 2 *expenditures from the Fund for the period*
 3 *covered by the report for costs described in*
 4 *subsection (c)(1).*

5 “(B) *AUDITING.—*

6 “(i) *IN GENERAL.—For the purpose of*
 7 *section 3515(c) of title 31, United States*
 8 *Code, the Fund shall be considered a compo-*
 9 *nent of an Executive agency.*

10 “(ii) *COMPONENTS OF AUDIT.—The*
 11 *annual audit required in accordance with*
 12 *sections 3515(b) and 3521 of title 31,*
 13 *United States Code, of the financial state-*
 14 *ments of activities carried out using*
 15 *amounts from the Fund shall include an*
 16 *analysis of—*

17 “(I) *the fees collected and dis-*
 18 *bursed under this section;*

19 “(II) *the reasonableness of the fee*
 20 *structure in place as of the date of the*
 21 *audit to meet current and projected*
 22 *costs of the system;*

23 “(III) *the level of use of the sys-*
 24 *tem by users; and*

1 “(IV) *the success to date of the*
2 *system in operating on a self-sus-*
3 *taining basis and improving the effi-*
4 *ciency of tracking waste shipments and*
5 *transmitting waste shipment data.*

6 “(iii) *FEDERAL RESPONSIBILITY.—The*
7 *Inspector General of the Environmental*
8 *Protection Agency shall—*

9 “(I) *conduct the annual audit de-*
10 *scribed in clause (ii); and*

11 “(II) *submit to the Administrator*
12 *a report that describes the findings and*
13 *recommendations of the Inspector Gen-*
14 *eral resulting from the audit.*

15 “(e) *CONTRACTS.—*

16 “(1) *AUTHORITY TO ENTER INTO CONTRACTS*
17 *FUNDED BY SERVICE FEES.—After consultation with*
18 *the Secretary of Transportation, the Administrator*
19 *may enter into 1 or more information technology con-*
20 *tracts with entities determined to be appropriate by*
21 *the Administrator (referred to in this subsection as*
22 *‘contractors’) for the provision of system-related serv-*
23 *ices.*

1 “(2) *TERM OF CONTRACT.*—*A contract awarded*
 2 *under this subsection shall have a term of not more*
 3 *than 10 years.*

4 “(3) *ACHIEVEMENT OF GOALS.*—*The Adminis-*
 5 *trator shall ensure, to the maximum extent prac-*
 6 *ticable, that a contract awarded under this sub-*
 7 *section—*

8 “(A) *is performance-based;*

9 “(B) *identifies objective outcomes; and*

10 “(C) *contains performance standards that*
 11 *may be used to measure achievement and goals*
 12 *to evaluate the success of a contractor in per-*
 13 *forming under the contract and the right of the*
 14 *contractor to payment for services under the con-*
 15 *tract, taking into consideration that a primary*
 16 *measure of successful performance shall be the*
 17 *development of a hazardous waste electronic*
 18 *manifest system that—*

19 “(i) *meets the needs of the user commu-*
 20 *nity (including States that rely on data*
 21 *contained in manifests);*

22 “(ii) *attracts sufficient user participa-*
 23 *tion and service fee revenues to ensure the*
 24 *viability of the system;*

1 “(iii) decreases the administrative bur-
2 den on the user community; and

3 “(iv) provides the waste receipt data
4 applicable to the biennial reports required
5 by section 3002(a)(6).

6 “(4) *PAYMENT STRUCTURE.*—Each contract
7 awarded under this subsection shall include a provi-
8 sion that specifies—

9 “(A) the service fee structure of the con-
10 tractor that will form the basis for payments to
11 the contractor; and

12 “(B) the fixed-share ratio of monthly service
13 fee revenues from which the Administrator shall
14 reimburse the contractor for system-related devel-
15 opment, operation, and maintenance costs.

16 “(5) *CANCELLATION AND TERMINATION.*—

17 “(A) *IN GENERAL.*—If the Administrator
18 determines that sufficient funds are not made
19 available for the continuation in a subsequent
20 fiscal year of a contract entered into under this
21 subsection, the Administrator may cancel or ter-
22 minate the contract.

23 “(B) *NEGOTIATION OF AMOUNTS.*—The
24 amount payable in the event of cancellation or
25 termination of a contract entered into under this

1 *subsection shall be negotiated with the contractor*
 2 *at the time at which the contract is awarded.*

3 “(6) *NO EFFECT ON OWNERSHIP.*—*Regardless of*
 4 *whether the Administrator enters into a contract*
 5 *under this subsection, the system shall be owned by*
 6 *the Federal Government.*

7 “(f) *HAZARDOUS WASTE ELECTRONIC MANIFEST SYS-*
 8 *TEM ADVISORY BOARD.*—

9 “(1) *ESTABLISHMENT.*—*Not later than 3 years*
 10 *after the date of enactment of this section, the Admin-*
 11 *istrator shall establish a board to be known as the*
 12 *‘Hazardous Waste Electronic Manifest System Advi-*
 13 *sory Board’.*

14 “(2) *COMPOSITION.*—*The Board shall be com-*
 15 *posed of 9 members, of which—*

16 “(A) *1 member shall be the Administrator*
 17 *(or a designee), who shall serve as Chairperson*
 18 *of the Board; and*

19 “(B) *8 members shall be individuals ap-*
 20 *pointed by the Administrator—*

21 “(i) *at least 2 of whom shall have ex-*
 22 *pertise in information technology;*

23 “(ii) *at least 3 of whom shall have ex-*
 24 *perience in using or represent users of the*
 25 *manifest system to track the transportation*

1 of hazardous waste under this subtitle (or
2 an equivalent State program); and

3 “(iii) at least 3 of whom shall be a
4 State representative responsible for proc-
5 essing those manifests.

6 “(3) DUTIES.—The Board shall meet annually to
7 discuss, evaluate the effectiveness of, and provide rec-
8 ommendations to the Administrator relating to, the
9 system.

10 “(g) REGULATIONS.—

11 “(1) PROMULGATION.—

12 “(A) IN GENERAL.—Not later than 1 year
13 after the date of enactment of this section, after
14 consultation with the Secretary of Transpor-
15 tation, the Administrator shall promulgate regu-
16 lations to carry out this section.

17 “(B) INCLUSIONS.—The regulations pro-
18 mulgated pursuant to subparagraph (A) may in-
19 clude such requirements as the Administrator de-
20 termines to be necessary to facilitate the transi-
21 tion from the use of paper manifests to the use
22 of electronic manifests, or to accommodate the
23 processing of data from paper manifests in the
24 electronic manifest system, including a require-
25 ment that users of paper manifests submit to the

1 *system copies of the paper manifests for data*
2 *processing purposes.*

3 “(C) *REQUIREMENTS.—The regulations*
4 *promulgated pursuant to subparagraph (A) shall*
5 *ensure that each electronic manifest provides, to*
6 *the same extent as paper manifests under appli-*
7 *cable Federal and State law, for—*

8 “(i) *the ability to track and maintain*
9 *legal accountability of—*

10 “(I) *the person that certifies that*
11 *the information provided in the mani-*
12 *fest is accurately described; and*

13 “(II) *the person that acknowledges*
14 *receipt of the manifest;*

15 “(ii) *if the manifest is electronically*
16 *submitted, State authority to access paper*
17 *printout copies of the manifest from the sys-*
18 *tem; and*

19 “(iii) *access to all publicly available*
20 *information contained in the manifest.*

21 “(2) *EFFECTIVE DATE OF REGULATIONS.—Any*
22 *regulation promulgated by the Administrator under*
23 *paragraph (1) and in accordance with section 3003*
24 *relating to electronic manifesting of hazardous waste*

1 *shall take effect in each State as of the effective date*
 2 *specified in the regulation.*

3 “(3) *ADMINISTRATION.—The Administrator shall*
 4 *carry out regulations promulgated under this sub-*
 5 *section in each State unless the State program is fully*
 6 *authorized to carry out such regulations in lieu of the*
 7 *Administrator.*

8 “(h) *REQUIREMENT OF COMPLIANCE WITH RESPECT*
 9 *TO CERTAIN STATES.—In any case in which the State in*
 10 *which waste is generated, or the State in which waste will*
 11 *be transported to a designated facility, requires that the*
 12 *waste be tracked through a hazardous waste manifest, the*
 13 *designated facility that receives the waste shall, regardless*
 14 *of the State in which the facility is located—*

15 “(1) *complete the facility portion of the applica-*
 16 *ble manifest;*

17 “(2) *sign and date the facility certification; and*

18 “(3) *submit to the system a final copy of the*
 19 *manifest for data processing purposes.*

20 “(i) *AUTHORIZATION FOR START-UP ACTIVITIES.—*
 21 *There are authorized to be appropriated \$2,000,000 for each*
 22 *of fiscal years 2013 through 2015 for start-up activities to*
 23 *carry out this section, to be offset by collection of user fees*
 24 *under subsection (c) such that all such appropriated funds*
 25 *are offset by fees as provided in subsection (c).’’.*

1 (b) *CONFORMING AMENDMENT.*—*The table of contents*
2 *of the Solid Waste Disposal Act (42 U.S.C. 6901) is amend-*
3 *ed by inserting at the end of the items relating to subtitle*
4 *C the following:*

“*Sec. 3024. Hazardous waste electronic manifest system.*”.

Attest:

Clerk.

112TH CONGRESS
2^D SESSION

S. 710

AMENDMENT